NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

[R07-324]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-22-212	Amend
R9-22-213	Amend
R9-22-216	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2907

3. The effective date of the rules:

September 11, 2007

The rulemaking is a result of litigation in the case of *Ekloff v. Rodgers.* The settlement agreement and Consent Decree require the Administration to cover incontinence briefs for Early and Periodic Screening Diagnosis and Treatment E.P.S.D.T. AHCCCS members who are incontinent as a result of their disabilities. The Administration must modify and finalize the rule in accordance with the terms of the decree within nine months of approval of the settlement agreement. The agreement was approved on November 17, 2006.

Therefore, an immediate effective date is authorized under A.R.S. § 41-1032(A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The rule provides a benefit to the public by describing the regulated coverage of incontinence briefs to E.P.S.D.T. AHCCCS members and complying with the terms of the Consent Decree.

4. A list of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 1422, April 28, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 1322, April 13, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Administration must revise rules to comply with the Consent Decree mandating the coverage of incontinence briefs as a preventive measure to certain E.P.S.D.T. AHCCCS members who are incontinent as a result of their disabilities.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

This rulemaking is anticipated to have a minimal to moderate economic impact on the involved parties. Affected members will benefit from the added coverage of incontinence briefs. Additional costs will be incurred by the Administration and the contractors for coverage of these supplies.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The additional changes that have been made between the proposed rules and the final rules are technical and provide further clarification of "medical supplies," "personal care items" and "incontinence briefs." In addition, "alcoholic beverages" have never been a covered service, therefore they were stricken from the list in R9-22-216.

The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

Additionally, an omission was identified in R9-22-212(E)(6)(f) where the word "no" was inadvertently omitted. This term must be added in order to conform to the terms of the consent decree.

11. A summary of the comments made regarding the rule and the agency response to them:

The Administration did not receive any comments regarding the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICES

Section
R9-22-212. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies
R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)
R9-22-216. NF, Alternative HCBS Setting, or HCBS

ARTICLE 2. SCOPE OF SERVICES

R9-22-212. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies

A. ~~Medical supplies, durable~~ Durable medical equipment, ~~and~~ orthotic and prosthetic devices, and medical supplies, including incontinence briefs as specified in subsection (E), are covered services if provided in compliance with requirements of this Chapter, and:

1. Prescribed by the primary care provider, attending physician, practitioner, or dentist; or
2. Prescribed by a specialist~~,~~, upon referral from the primary care provider~~,~~, attending physician, practitioner, or dentist;

and

3. Authorized as required by the Administration, contractor, or contractor's designee.

B. Covered medical supplies are consumable items that are designed specifically to meet a medical purpose, are disposable, and are essential for the member's health.

C. Covered DME is any item, appliance, or piece of equipment that is:
1. Designed for a medical purpose, and
2. ~~To~~ Designed to withstand wear, and
3. Generally reusable by others, and
4. Purchased or rented for a member.

D. Covered prosthetic and orthotic devices are only those items that are essential for the habilitation or rehabilitation of a member.

E. The following limitations on coverage apply:
1. The DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.
2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair or adjustment is less than the cost of renting or purchasing another unit.
3. A change in, or addition to, an original order for DME is covered if approved by the ~~member's primary care provider or authorized~~ prescriber in subsection (A), or prior authorized by the Administration or contractor, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME may be made after a claim for services is submitted to the member's contractor, or the Administration, without prior written notification of the change or addition to the Administration or the contractor.
4. Reimbursement for rental fees shall terminate:
   a. No later than the end of the month in which the ~~primary care provider or authorized~~ prescriber in subsection (A) certifies that the member no longer needs the DME;
   b. If the member is no longer eligible for AHCCCS services; or
   c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified in R9-22-509. ~~by the Administration.~~
5. ~~Personal incidentals~~ Except for incontinence briefs for persons over 3 years old and under 21 years old as provided in subsection (6), personal care items including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition. ~~and:~~ Personal care items are not covered services if used solely for preventive purposes.
   ~~a. Prescribed by:~~
      ~~i. The member's primary care provider, attending physician, practitioner;~~
      ~~ii. A specialist upon referral from the primary care provider, attending physician, or practitioner; and~~
   ~~b. Authorized as required by the Administration, or contractor or its designee.~~
6. Incontinence briefs, including pull-ups are covered to prevent skin breakdown and enable participation in social, community, therapeutic and educational activities under the following circumstances:
   a. The member is over 3 years old and under 21 years old;
   b. The member is incontinent due to a documented disability that causes incontinence of bowel or bladder, or both;
   c. The PCP or attending physician has issued a prescription ordering the incontinence briefs;
   d. Incontinence briefs do not exceed 240 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 240 briefs per month for a member diagnosed with chronic diarrhea or spastic bladder;
   e. The member obtains incontinence briefs from providers in the contractor's network.
   f. Prior authorization has been obtained as required by the Administration, contractor, or contractor's designee. Contractors may require a new prior authorization to be issued no more frequently than every 12 months. Prior authorization for a renewal of an existing prescription may be provided by the physician through telephone contact with the member rather than an in-person physician visit. Prior authorization will be permitted to ascertain that:
      i. The member is over age 3 and under age 21;
      ii. The member has a disability that causes incontinence of bladder or bowel, or both;
      iii. A physician has prescribed incontinence briefs as medically necessary. A physician prescription supporting medical necessity may be required for specialty briefs or for briefs different from the standard briefs supplied by the contractor; and
      iv. The prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.
~~6.~~ 7. First aid supplies are not covered unless they are provided in accordance with a prescription.
~~7.~~ 8. Hearing aids are not covered for a member who is age 21 or older.
~~8.~~ 9. Prescriptive lenses are not covered for a member who is age 21 or older unless they are the sole visual prosthetic

device used by the member after a cataract extraction.

F. Liability and ownership.
1. Purchased DME that is provided to a member ~~that is~~ and no longer needed by the member may be disposed of in accordance with each contractor's policy.
2. The Administration shall retain title to purchased DME ~~supplied~~ provided to a member who becomes ineligible or no longer requires ~~its~~ use of the DME.
3. If customized DME is purchased by the Administration or contractor for a member, the equipment shall remain with the person during times of transition to a different contractor, or upon loss of eligibility. For purposes of this subsection, customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.
   ~~a. For purposes of this Section customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.~~
   ~~b. A member shall return customized DME obtained fraudulently to the Administration or the contractor.~~
4. A member shall return DME obtained fraudulently to the Administration or the contractor.

R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)

A. The following E.P.S.D.T. services are covered for a member less than 21 years of age:
1. Screening services including:
   a. Comprehensive health and developmental history;
   b. Comprehensive unclothed physical examination;
   c. Appropriate immunizations according to age and health history;
   d. Laboratory tests; and
   e. Health education, including anticipatory guidance;
2. Vision services including:
   a. Diagnosis and treatment for defects in vision;
   b. Eye examinations for the provision of prescriptive lenses; and
   c. ~~Provision of prescriptive~~ Prescriptive lenses;
3. Hearing services including:
   a. Diagnosis and treatment for defects in hearing;
   b. Testing to determine hearing impairment; and
   c. ~~Provision of hearing~~ Hearing aids;
4. Dental services including:
   a. Emergency dental services as specified in R9-22-207;
   b. Preventive services including screening, diagnosis, and treatment of dental disease; and
   c. Therapeutic dental services including fillings, crowns, dentures, and other prosthetic devices;
5. Orthognathic surgery;
6. Nutritional assessment and nutritional therapy as specified in contract to provide complete daily dietary requirements or supplement a member's daily nutritional and caloric intake;
7. Behavioral health services under 9 A.A.C. 22, Article 12;
8. Hospice services as follows:
   a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
   b. Services available to a member receiving hospice care are limited to those allowable under 42 CFR 418.202, ~~December 20, 1994~~ October 1, 2006, incorporated by reference and on file with the Administration ~~and the Office of the Secretary of State~~. This incorporation by reference contains no future editions or amendments~~; and~~.
   c. Hospice services do not include:
      i. Medical services provided that are not related to the terminal illness; or
      ii. Home-delivered meals~~.~~; and
   d. Hospice services that are provided and covered through Medicare are not covered by AHCCCS~~.~~;
9. Incontinence briefs as specified under R9-22-212; and

~~9.~~10. Other necessary health care, diagnostic services, treatment, and measures required by 42 U.S.C. 1396d(r)(5).

B. Providers of E.P.S.D.T. services shall meet the following standards:
1. ~~Provide~~ Ensure that services are provided by or under the direction of the member's primary care provider, attending physician, practitioner, or dentist.
2. Perform tests and examinations under 42 CFR 441 Subpart B, ~~January 29, 1985~~ October 1, 2006, which is incorporated by reference and on file with the ~~Office of the Secretary of State and the~~ Administration. This incorporation by reference contains no future editions or amendments.
3. Refer a member as necessary for dental diagnosis and treatment and necessary specialty care.
4. Refer a member as necessary for behavioral health evaluation and treatment services.

C. Contractors shall meet other E.P.S.D.T. requirements as specified in contract.
D. A primary care provider, attending physician, or practitioner shall refer a member with special health care needs under R9-7-301 to CRS.

R9-22-216. NF, Alternative HCBS Setting, or HCBS
A. Services provided in a NF, including room and board, alternative HCBS setting as defined in R9-28-101, or HCBS as defined in ~~R9-28-101~~ A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
B. Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
1. Nursing services including:
   a. Administering medication,
   b. Tube feedings,
   c. Personal care service (assistance with bathing and grooming),
   d. Routine testing of vital signs, and
   e. Maintenance of a catheter;
2. Basic patient care equipment and sickroom supplies including:
   a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
   b. Bathing and grooming supplies;
   c. Identification device;
   d. Skin lotion;
   e. Medication cup;
   f. Alcohol wipes, cotton balls, and cotton rolls;
   g. Rubber gloves (non-sterile);
   h. Laxatives;
   i. Bed and accessories;
   j. Thermometer;
   k. Ice bags;
   l. Rubber sheeting;
   m. Passive restraints;
   n. Glycerin swabs;
   o. Facial tissue;
   p. Enemas;
   q. Heating pad; and
   r. ~~Diapers; and~~ Incontinence briefs.
   ~~s. Alcoholic beverages;~~
3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal~~,~~ or state licensure standard~~,~~ or county certification requirement;
5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
6. Physical therapy prescribed only as a maintenance regimen; and
7. Assistive devices ~~or~~ and non-customized durable medical equipment.

C. A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM CHILDREN'S HEALTH INSURANCE PROGRAM

[R07-325]

PREAMBLE

1. Sections Affected	Rulemaking Action
R9-31-201	Amend
R9-31-212	Amend
R9-31-216	Amend

R9-31-1611 Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2989

3. The effective date of the rules:

September 11, 2007

The rulemaking is a result of litigation in the case of *Ekloff v. Rodgers*. The settlement agreement and consent decree require the Administration to cover incontinence briefs for Early and Periodic Screening Diagnosis and Treatment E.P.S.D.T. AHCCCS members who are incontinent as a result of their disabilities. The Administration must modify and finalize the rule in accordance with the terms of the decree within nine months of approval of the settlement agreement. The agreement was approved on November 17, 2006.

Therefore, an immediate effective date is authorized under A.R.S. § 41-1032(A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation to the rule. The rule provides a benefit to the public by describing the regulated coverage of incontinence briefs to E.P.S.D.T. AHCCCS members.

4. A list of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 1424, April 28, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 1327, April 13, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Administration must revise rules to comply with the Consent Decree mandating the coverage of incontinence briefs as a preventive measure to certain E.P.S.D.T. AHCCCS members who are incontinent as a result of their disabilities.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

This rulemaking is anticipated to have a minimal to moderate economic impact on the involved parties. Affected members will benefit from the added coverage of incontinence briefs. Additional costs will be incurred by the Administration and the contractors for coverage of these supplies.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No additional changes have been made between the proposed rules and the final rules.

11. A summary of the comments made regarding the rule and the agency response to them:

The Administration did not receive any comments regarding the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 2. SCOPE OF SERVICES

Section
R9-31-201. General Requirements
R9-31-212. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies
R9-31-216. NF, Alternative HCBS Setting, or HCBS

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

Section
R9-31-1611. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies

ARTICLE 2. SCOPE OF SERVICES

R9-31-201. General Requirements

A. The Administration shall administer the Children's Health Insurance Program under A.R.S. § 36-2982.
B. Scope of ~~Services~~ services for Native American fee-for-service members is under Article 16 of this Chapter.
C. A contractor or RBHA shall provide behavioral health services under Article 12 and Article 16.
D. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
2. The Administration or a contractor may waive the covered services referral requirements of this Article.
3. Except as authorized by a contractor, a primary care provider, practitioner, or dentist shall provide or direct the member's covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.
4. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor's network without a referral from a primary care provider.
5. A member may receive behavioral health evaluation services without a referral from a primary care provider. A member may receive behavioral health treatment services only under referral from the primary care provider, or upon authorization by the contractor or the contractor's designee.
6. A member may receive treatment that is considered the standard of care~~,~~ or that is approved by the AHCCCS Chief Medical Officer after appropriate input from providers who are considered experts in the field by the professional medical community.
7. An AHCCCS registered provider shall provide covered services within the provider's scope of practice.
8. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
   a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research~~,~~;
   b. Services or items furnished gratuitously~~,~~; and
   c. Personal care items, except as specified in R9-31-212.
9. Medical or behavioral health services are not covered if provided to:
   a. An inmate of a public institution;
   b. A person who is a resident of an institution for the treatment of tuberculosis; or
   c. A person who is in an IMD at the time of application, unless provided under Article 12 of this Chapter.

E. The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained under this Article and Article 7 of this Chapter. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
F. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. ~~The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.~~
G. Under A.R.S. § 36-2989, a member shall receive covered services outside of the GSA only if one of the following applies:

1. A member is referred by a primary care provider for medical specialty care out of the contractor's area. If the member is referred outside of the GSA to receive an authorized medically necessary service, a contractor shall also provide all other medically necessary covered services for the member;
2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member's family; or
3. The contractor authorizes placement in a nursing facility located outside of the GSA;

H. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.

I. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

J. The restrictions, limitations, and exclusions in this Article do not apply to a contractor if the contractor elects to provide noncovered services.
1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.

R9-31-212. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies

~~**A.**~~ As specified in A.R.S. § 36-2989, ~~medical supplies,~~ DME, ~~and~~ orthotic and prosthetic devices, and medical supplies, including incontinence briefs, are covered services if provided in compliance with requirements of this Chapter and~~:~~ A.A.C. R9-22-212. For purposes of this Section, where the term "AHCCCS services" is used in R9-22-212, it is replaced with the term "Title XXI services."

~~1. Prescribed by the member's primary care provider, practitioner, or dentist;~~
~~2. Prescribed by a specialist upon referral from the primary care provider, practitioner, or dentist; and~~
~~3. Authorized by the contractor or the contractor's designee.~~

~~**B.** Covered medical supplies are consumable items that are disposable and are essential to a member's health.~~

~~**C.** Covered DME is any item, appliance, or piece of equipment that is:~~
~~1. Designed for a medical purpose,~~
~~2. To withstand wear,~~
~~3. Generally reusable by others, and~~
~~4. Purchased or rented for a member.~~

~~**D.** Covered prosthetic and orthotic devices are only those items that are essential for the habilitation or rehabilitation of a member.~~

~~**E.** The following limitations on coverage include:~~
~~1. DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased;~~
~~2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair is less than the cost of renting or purchasing another unit;~~
~~3. A change in, or addition to, an original order for DME is covered if approved by the member's primary care provider or authorized prescriber, or prior authorized by the contractor for a member, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME shall be made after a claim for services is submitted to a member's contractor, without prior written notification of the change or addition;~~
~~4. Reimbursement for rental fees shall terminate:~~
~~a. No later than the end of the month in which the primary care provider or authorized prescriber certifies that the member no longer needs the DME;~~
~~b. If the member is no longer eligible for AHCCCS services; or~~
~~c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified by the Administration.~~
~~5. Personal incidentals including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition and:~~
~~a. Prescribed by:~~
~~i. The member's primary care provider or practitioner, or~~
~~ii. A specialist upon referral from the primary care provider or practitioner; and~~
~~b. Authorized as required by the contractor or its designee;~~
~~6. First aid supplies are not covered unless they are provided in accordance with a prescription.~~

~~**F.** Liability and ownership.~~
~~1. Purchased DME provided to a member that is no longer needed may be disposed of in accordance with each contractor's policy.~~

2. ~~If customized DME is purchased by the contractor for a member, the DME shall remain with the member during times of transition, or upon loss of eligibility.~~
   a. ~~For purposes of this Section, customized DME refers to DME that has been altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.~~
   b. ~~A member shall return customized DME obtained fraudulently to the Administration or the contractor.~~

R9-31-216. NF, Alternative HCBS Setting, or HCBS

~~**A.**~~ Services provided in a NF, including room and board, alternative HCBS setting, or HCBS ~~as defined in R9-28-101, or HCBS as defined in R9-28-101 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.~~ shall be covered as specified in A.A.C. R9-22-216.

~~**B.**~~ ~~Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:~~
1. ~~Nursing services including:~~
   a. ~~Administering medication,~~
   b. ~~Tube feedings,~~
   c. ~~Personal care services (assistance with bathing and grooming),~~
   d. ~~Routine testing of vital signs, and~~
   e. ~~Maintenance of catheter.~~
2. ~~Basic patient care equipment and sickroom supplies, including:~~
   a. ~~First aid supplies such as bandages, tape, ointment, peroxide, alcohol, and over-the-counter remedies;~~
   b. ~~Bathing and grooming supplies;~~
   c. ~~Identification device;~~
   d. ~~Skin lotion;~~
   e. ~~Medication cup;~~
   f. ~~Alcohol wipes, cotton balls, and cotton rolls;~~
   g. ~~Rubber gloves (non-sterile);~~
   h. ~~Laxatives;~~
   i. ~~Bed and accessories;~~
   j. ~~Thermometer;~~
   k. ~~Ice bags;~~
   l. ~~Rubber sheeting;~~
   m. ~~Passive restraints;~~
   n. ~~Glycerin swabs;~~
   o. ~~Facial tissue;~~
   p. ~~Enemas;~~
   q. ~~Heating pad; and~~
   r. ~~Diapers.~~
3. ~~Dietary services including preparation and administration of special diets, and adaptive tools for eating;~~
4. ~~Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal mandate, state licensure standard, or county certification requirement;~~
5. ~~Physician visits made solely for the purpose of meeting a state licensure standard or county certification requirement;~~
6. ~~Physical therapy; and~~
7. ~~Assistive device or non-customized DME.~~

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

R9-31-1611. ~~Medical Supplies,~~ Durable Medical Equipment, ~~and~~ Orthotic and Prosthetic Devices, and Medical Supplies

~~**A.**~~ ~~Medical supplies, DME~~ Durable medical equipment, ~~and~~ orthotic and prosthetic devices, and medical supplies, including incontinence briefs, are covered services if provided in compliance with the requirements of this Chapter~~;~~ and A.A.C. R9-22-212. For purposes of this Section, where the phrase "AHCCCS services" is used in R9-22-212, it is replaced with the phrase "Title XXI services." Where the term "provider" or "contractor" is used, it is replaced with the phrase "IHS or Tribal facility."
1. ~~Authorized by the Administration,~~
2. ~~Prescribed by the IHS or Tribal Facility provider, or~~
3. ~~Prescribed by a physician or a practitioner upon referral from the IHS or a Tribal Facility unless the referral is waived by the Administration.~~

~~**B.**~~ ~~Covered medical supplies are consumable items that are disposable and are essential to a member's health.~~

~~**C.**~~ ~~Covered DME is any item, appliance, or piece of equipment that is:~~
1. ~~Designed for a medical purpose,~~

~~2. To withstand wear,~~
~~3. Generally reusable by others, and~~
~~4. Purchased or rented for a member.~~

~~**D.** Covered prosthetic and orthotic devices are only those items that are essential for the habilitation or rehabilitation of a member.~~

~~**E.** The following limitations on coverage apply:~~
~~1. DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.~~
~~2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair is less than the cost of renting or purchasing another unit.~~
~~3. A change in, or addition to, an original order for DME is covered if approved by a member's IHS or a Tribal Facility provider or an authorized prescriber and the change or addition is indicated clearly on the order and initialed by a vendor.~~
~~4. Reimbursement for rental fees shall terminate:~~
~~a. No later than the end of the month in which the IHS or a Tribal Facility provider or an authorized prescriber certifies that the member no longer needs the DME,~~
~~b. If the member is no longer eligible for service through this program, or~~
~~c. If the member is no longer enrolled with the IHS with the exception of transitions of care as specified by the Administration.~~
~~5. Personal incidentals including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition and:~~
~~a. Prescribed by:~~
~~i. The member's attending physician or practitioner, or~~
~~ii. A specialist upon referral from an IHS or tribal facility provider, and~~
~~b. Authorized as required by the Administration.~~
~~6. First aid supplies are not covered unless they are provided according to a prescription.~~

~~**F.** Liability and ownership.~~
~~1. Purchased DME provided to a member that is no longer needed may be disposed of as specified in the policy of the IHS or a Tribal Facility.~~
~~2. If customized DME is purchased for a member by the Administration, the DME shall remain with the member during times of transition, or upon loss of eligibility.~~
~~a. For purposes of this Section, customized DME refers to DME that has been altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.~~
~~b. A member shall return customized equipment obtained fraudulently to the Administration.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R07-323]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R17-4-201	Amend
R17-4-207	Repeal
R17-4-207	New Section
R17-4-208	Repeal
R17-4-208	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-2064

3. The effective date of the rules:

November 10, 2007

4. A list of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 4904, December 29, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 954, March 23, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Celeste M. Cook, Administrative Rules Analyst

Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

6. An explanation of the rules, including the agency's reason for initiating the rules:

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on February 3, 2004. The Arizona Department of Transportation, Motor Vehicle Division, proposes to amend the existing rules to codify title-holding and electronic lien filing/electronic lien clearance requirements, conform to current statute, remove and update related citations. Changes are also made to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The anticipated economic impact of these rules on the Division is moderate, as the rules require the Division to mail the Arizona Certificate of Title to the lienholder of record and maintain electronic title lien records for members of the Electronic Lien and Title program.

The Division anticipates that the economic impact of these rules on small businesses is moderate to substantial as lenders as the rules require the lienholder to implement and maintain a filing system for the Arizona Certificate of Titles for which the lienholder is listed as the lienholder of record. Qualified lenders who opt to participate in the Electronic Lien and Title program will need to establish a computer system and connectivity with the Division's Electronic Lien and Title system for the transmitting of lien filing and lien release information.

The Division anticipates that the economic impact of these rules on the consumer is minimal.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

An internal review resulted in a request to expand the requirements listed in R17-4-208(A) rather than refer the reader to another rule and a request to research lien clearance requirements, specifically the requirement that the lien clearance document provide the lien date. Research established that the lien date is not required by statute and that removing that requirement would not negatively impact the Division, the lienholder, or the customer and would further benefit all parties by reducing the number of return visits due to incorrect lien dates. As a result, the required documentation was added to R17-4-208(A) and the lien date requirement was removed from R17-4-208(A)(6).

In addition, minor grammatical and style corrections were made to some Sections at the request of agency staff.

11. A summary of the comments made regarding the rules and the agency response to them:

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:
Not applicable

14. Was this rule previously made as an emergency rule?
No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 2. VEHICLE TITLE

Section
R17-4-201. Definitions
R17-4-207. ~~Filing liens and encumbrances~~ Lien Filing
R17-4-208. ~~Vehicle title lien clearance requirements~~ Lien Clearance

ARTICLE 2. VEHICLE TITLE

R17-4-201. Definitions

~~Unless otherwise indicated, the following definitions apply to this Article:~~ In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

"Authorized ELT Participant" means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

"Date of lien" means the date identified by the lienholder as the date the loan was issued to the borrower.

1. "Division" ~~or "MVD"~~ means ~~Motor Vehicle Division of~~ the Arizona Department of ~~Transportation,~~ Transportation's Motor Vehicle Division.
2. "Encumbrance" means a lien recorded, by the Division, on a vehicle or mobile home record and ~~title that is released upon payment or cancellation of the obligation.~~ the Arizona Certificate of Title.

   "ELT" means Electronic Lien and Title.
3. "EPA standards" means the emission standards of the Environmental Protection Agency ~~standards,~~ as prescribed under 40 CFR 86.
4. "FMVSS" means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.
5. ~~"GVWR" or "gross vehicle weight rating" has the meaning prescribed in A.R.S. § 28-3001(10).~~
6. "Joint tenancy with right of survivorship" means vehicle ownership by two or more ~~people~~ persons and ~~with~~ the ~~share of a~~ deceased joint ~~tenant~~ owner's interest in the vehicle ~~going~~ is transferred to the surviving ~~tenant~~ owners.

   "Lienholder" means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

   "Lienholder Number" means the computer generated record number assigned by the Division to a lienholder.
7. "Low-speed vehicle" has the same meaning as prescribed ~~in~~ under 49 CFR 571.3.
8. ~~"Multipurpose passenger vehicle" or~~ "MPV" means ~~a~~ multipurpose passenger ~~motor~~ vehicle ~~with motive power, except a low-speed vehicle or a trailer designed to carry 10 persons or fewer, constructed either on a truck chassis or with special features for occasional off-road operation.~~, which has the same meaning as prescribed under 49 CFR 571.3.

   "MVD" means the Arizona Department of Transportation's Motor Vehicle Division.
9. "NHTSA" means the National Highway Traffic Safety Administration of the United States Department of Transportation.

   "Operation of law lien" means a lien resulting from the application of a state or federal statute.

   "Primary lien" means the first of any multiple liens recorded on a vehicle or mobile home record.
10. "Registered importer" means a person ~~who:~~ registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.
    a. ~~Is registered by the NHTSA Administrator as prescribed under 49 CFR 592.5;~~
    b. ~~Is licensed under A.R.S. Title 28, Chapter 10, Article 2; and~~

~~c. Performs duties as prescribed under 49 CFR 592.6.~~

~~11.~~ "Tenancy in common" means vehicle ownership by two or more people without the right of survivorship.

~~12.~~ "Valid titling document" means one of the following documents showing a vehicle's compliance with ~~federal vehicle equipment and emissions equipment standards:~~ FMVSS and EPA standards:

~~a.~~ A ~~registered importer's certificate~~ NHTSA Declaration,

~~b.~~ A manufacturer's letter, or

~~c.~~ A U.S. federal compliance label printed in English.

R17-4-207. ~~Filing liens and encumbrances~~ Lien Filing

~~**A.** Section 66-231, A.C.A. 1939, provides for the filing of liens and encumbrances upon motor vehicles with the Division of Motor Vehicles, which section provides, however, that the liens or encumbrances so deposited shall not constitute constructive notice until the issuance of a new certificate of title issued after the filing of said lien.~~

A. Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.

1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.

~~**B.** This Section further provides, upon the depositing of any lien or encumbrance, it shall be accompanied by the certificate of title last issued, and the fee or fees provided by law to be paid, whereupon the Division is required to file the application and documents, endorsing thereon the date and hour received and, when satisfied as to the genuineness and regularity of the application, shall issue a new certificate of title showing the name of the owner and statement of all liens and encumbrances, and the amount thereof.~~

B. Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.

~~**C.** In the past, liens and encumbrances have been submitted to the Division for filing that have not been accompanied by the documents and fees required by law to be filed therewith.~~

C. Lien filing notice. The Division shall notify the lienholder of the recording of a lien.

1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

~~**D.** Effective immediately, any lien or encumbrance submitted for deposit with this Division, unless accompanied by certificate of title and the required fees, shall be immediately returned, without endorsing thereon the date or hour received, advising and instructing the person so depositing, that the law requires that there shall be deposited with every lien or encumbrance, the certificate of title to the motor vehicle, accompanied by the fee or fees required by law to be paid.~~

R17-4-208. ~~Vehicle title lien clearance requirements~~ Lien Clearance

~~A.R.S. § 28-325, subsection (G), reads: "When final payment is made on a lien or encumbrance recorded under this section, the holder thereof shall make and deliver to the lienor or encumbrancer a satisfaction thereof. Upon delivery to the vehicle division by the lienor or encumbrancer of the certificate of title to the vehicle on which the lien or encumbrance was given, together with satisfaction thereof, the division shall satisfy the lien or encumbrance on its records and on the certificate of title to the vehicle".~~

A. Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:

~~1. The above quoted statute clearly requires that the lien holder shall make and deliver to the lienor a satisfaction.~~

1. The transmission of an electronic lien release from an ELT Participant,

~~2. The act of stamping on the face of a title the words "Paid" or "Lien Satisfied" does not comply with the requirements of the Section referred to above.~~

2. A certificate of title acknowledged by the lienholder as prescribed under subsection B(1),

~~3. The Motor Vehicle Division does as a matter of policy furnish to each lien holder a lien filing receipt.~~

3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection B(1),

~~4. To give full effect to the provisions of the above quoted statute and for the best interests of all lien holders, IT IS ORDERED that either one of the two forms as indicated below must be furnished the division for the purpose of satisfying the lien on the division records and on the certificate of title to the vehicle.~~

~~a. The lien filing receipt furnished the lien holder by the motor vehicle division, on which receipt the lien holder may indicate by use of a rubber stamp that the lien has been paid or satisfied. Such stamp shall be validated by the full signature of the lien holder or his authorized agent. The date of the validation shall be indicated.~~

~~b. Any form of instrument giving a complete description of the vehicle, the date, amount and type of lien as recorded on the certificate of title and indicating that the lien has been paid or satisfied. The authorized signature of the lien holder or his authorized agent appearing on the instrument must be acknowledged before a Notary Public.~~

4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection B(1),
5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection B(1); or
6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection B(1).

B. Lienholder satisfaction of lien requirements.

1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.

C. Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.

D. Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.